



CITY OF LODI
COUNCIL COMMUNICATION

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AGENDA TITLE: Introduce ordinance amending Lodi Municipal Code Title **12 - Streets, Sidewalks, and Public Places**, by adding Chapter **12.03, "Sidewalks"** to place liability on the adjoining property owner as permitted under state law (CA)

MEETING DATE: February **1, 2006** (Carried over from meetings of **1/4/2006** and **1/18/2006**)

PREPARED BY: Janice D. Magdich, Deputy City Attorney

RECOMMENDED ACTION: That the City Council introduce an Ordinance Amending Lodi Municipal Code Title 12 – Streets, Sidewalks and Public Places by adding Chapter 12.03, "Sidewalks" to place liability on the adjoining property owner as permitted under state law.

BACKGROUND INFORMATION: At the March 22, 2005 Shirtsleeve Session and the regular City Council meeting of October 5, 2005, discussion took place regarding the City's sidewalk installation and maintenance policies.

As discussed, Streets and Highway Code section 5610 establishes a property owner's duty to a city to maintain the abutting sidewalk in a condition that will not endanger persons or property and a duty to maintain the sidewalk in a condition that will not interfere with public use. Following state law, sidewalk maintenance in the City has always been the responsibility of the adjoining property owner, unless damage to the sidewalk is caused by City owned trees (in which case the City takes responsibility for correcting the damage).

However, the California Legislature has not specifically imposed upon property owners a duty of care to third parties regarding the condition of abutting sidewalks. Therefore, cities in California, consistent with their police power and case law, are free to adopt local ordinances creating such a duty of care. The courts have determined that these types of ordinances do not conflict with the California Tort Claims Act because they do not attempt to shift liability from the cities to the abutting property owner. And do not absolve cities from liability when cities create a dangerous condition or when cities have notice of unsafe conditions and fail to act.

Therefore, the City Attorney's office, with the input and concurrence of the Public Works Director and the Street Superintendent, has drafted the proposed ordinance to impose upon property owners a duty of care to third parties regarding the condition of abutting sidewalks.

FUNDING: Not applicable.

FISCAL IMPACT: Expected Savings to City's Self-Insurance Fund


Janice D. Magdich, Deputy City Attorney

Attachments

cc: Richard Prima, Public Works Director
George Bradley, Street Superintendent

APPROVED: 
Blair King, City Manager

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LODI AMENDING LODI MUNICIPAL CODE TITLE 12 –
STREETS, SIDEWALKS, AND PUBLIC PLACES – BY ADDING
CHAPTER 12.03, “SIDEWALKS”

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

Section 1. Lodi Municipal Code Title 12, “Streets, Sidewalks, and Public Places,” is hereby amended by adding Chapter 12.03, “Sidewalks,” to read as follows:

Chapter 12.03

SIDEWALKS

Sections:

- 12.03.010 – Definitions
- 12.03.020 – Sidewalk Maintenance and Repair
- 12.03.030 – Liability for Injury to the Public
- 12.03.040 – Civil Liability for Injuries and Indemnification
- 12.03.050 – Enforcement of this Chapter

12.03.010 – Definitions.

As used in this Chapter, the terms listed below shall have the meaning assigned them.

“Sidewalk” means that area fronting private or public property within the public right-of-way and intended for pedestrian travel, whether or not such area is improved or paved, and any parkway, driveway, curb, or gutter that was or should have been constructed in conformance with the City's specifications for such improvements.

“Defective Sidewalk” means a sidewalk where, in the judgment of the Public Works Director or his/her designee, the vertical or horizontal line or grade is altered, damaged, or displaced to an extent that a safety hazard exists or the sidewalk is in such a condition as to endanger persons or property or is in such a condition as to interfere with the public convenience and use of the sidewalk. Defective Sidewalk shall also include any condition of a public pedestrian right-of-way determined by a court of competent jurisdiction to constitute a dangerous condition of public property.

“Property Owner” means any person, partnership, corporation, or other entity, public or private, owning a lot, lots, or portion of a lot within the City of Lodi and fronting on any portion of a public street, alley, or place where sidewalk exists.

“Lot,” “lots,” or “portions of lots” means a parcel of real property located within the City of Lodi, fronting on any portion of a public street, alley, or place where a sidewalk exists.

12.03.020 – Sidewalk Maintenance and Repair.

A. The provisions of Chapter 22 of Part 3, Division 7, Street and Highways Code of the State of California (“The Improvement Act of 1911”), as is now in effect or as may be

amended, are expressly referred to and by such reference made a part of this Chapter, including all proceedings applicable to the maintenance and repair of sidewalks, and the confirming and collecting of assessments for the cost and expenses of said maintenance and repair.

B. The procedure set forth in The Improvement Act of 1911 concerning the maintenance and repair of sidewalks, is, to the extent permitted under State law, subject to revision or supplementation by policies as may from time to time be adopted by resolution of the City Council. Maintenance and repair of sidewalks shall be to specifications established by the Public Works Director or his/her designee.

12.03.030 – Liability for Injury to the Public.

Property Owner is required under this Chapter to maintain and repair the sidewalk fronting on the Property Owner's lot and shall owe a duty to members of the public to keep and maintain the sidewalk in a safe and non-dangerous condition such that it will not endanger persons or property. If, as the result of any failure of any Property Owner to maintain the sidewalk in a safe and non-dangerous condition as required under this Chapter, any person suffers injury or damage to person or property, the Property Owner shall be liable to such person for the resulting damages or injury.

12.03.040 – Civil Liability for Injuries and Indemnification.

Any Property Owner that fails to maintain the sidewalk fronting on the Property Owner's lot, lots, or portion of a lot in a safe and non-dangerous condition as required under this Chapter shall bear the sole civil liability, if any, to a person suffering personal injury or property damage caused by the Defective Sidewalk. In the event that the City is held liable in any civil action for damages for personal injury or property damages caused by a Defective Sidewalk, the City shall be entitled to full indemnity from the Property Owner.

12.03.050 – Enforcement of this Chapter.

The City Manager, through the Public Works Director, shall enforce this Chapter.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 5. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall take effect 30 days from and after its passage and approval.

Approved this ____ day of _____, 2006

SUSAN HITCHCOCK
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk

=====
State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. ____ was introduced at a regular meeting of the City Council of the City of Lodi held February 1, 2006, and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 2006, by the following vote:

AYES: COUNCIL MEMBERS –
NOES; COUNCIL MEMBERS –
ABSENT: COUNCIL MEMBERS –
ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. ____ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney

By _____
Janice D. Magdich
Deputy City Attorney

Sidewalk Liability Ordinance

Presented February 1, 2006

SIDEWALK MAINTENANCE

(not on tonight's agenda)

- Existing City Policy: Property Owners have a duty to repair the sidewalk abutting their property, unless the defect is caused by an instrumentality of the City.
- The City's policy mirrors the 1911 Improvement Act which is set forth in the Streets & Highways Code

Property owners are responsible for maintaining the sidewalks abutting their property

Streets & Highway Code §5610 provides -

- The owner of lots or portions of lots fronting on any portion of a public street . . . shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those works or areas. . .

There will be NO change to the
City's existing sidewalk
maintenance policy under the
proposed ordinance

LIABILITY FOR INJURY TO THE PUBLIC

Williams v. Foster

The Appellate Court held –

In the absence of clear legislative language to the contrary, the abutting property owner's duty to maintain the sidewalk is owed only to the city and not to the public. Under common law, cities, not property owners, are liable for injuries to third parties resulting from dangerous conditions on the sidewalk abutting their property absent a showing that a negligent act or omission of the property owner led to the injury.

In response to the Court's decision
in Williams v. Foster, the City of
San Jose adopted Municipal Code
§ 14.16.2205 in 1990.

San Jose Municipal Code

§14.16.2205

The property owner required . . . to maintain and repair the sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and non-dangerous condition. If, as a result of the failure of any property owner to maintain the sidewalk area in a non-dangerous condition as required by . . . , any person suffers injury or damage to person or property, the property owners shall be liable to such person for the resulting damages or injury.

Appellate Court Ruling

Gonzales v. City of San Jose

The Appellate Court ruled that San Jose's Ordinance is constitutional; does not absolve San Jose of liability for dangerous conditions on city owned sidewalks; and serves an important public policy by providing incentives to abutting landowners to maintain the sidewalks abutting their property in a safe condition.

Proposed §12.03.030

Liability for Injury to the Public.

Property Owner is required under this Chapter to maintain and repair the sidewalk fronting on the Property Owner's lot and shall owe a duty to members of the public to keep and maintain the sidewalk in a safe and non-dangerous condition such that it will not endanger persons or property. If as the result of any failure of any Property Owner to maintain the sidewalk in a safe and non-dangerous condition as required under this Chapter, any person suffers injury or damage to person or property, the Property Owner shall be liable to such person for the resulting damages or injury.

Proposed §12.03.040

Civil Liability for Injuries and Indemnification

Any Property Owner that fails to maintain the sidewalk fronting on the Property Owner's lot, lots or portion of a lot, in a safe and non-dangerous condition as required under this Chapter shall bear the sole civil liability, if any, to a person suffering personal injury or property damage caused by the Defective Sidewalk. In the event that the City is held liable in any civil action for damages for personal injury or property damages caused by a Defective Sidewalk the City shall be entitled to full indemnity from the Property Owner.

Northern California Cities that have adopted liability ordinances:

<ul style="list-style-type: none">■ Brentwood■ Clayton■ Cotati■ Danville■ El Cerrito■ Eureka■ Lafayette	<ul style="list-style-type: none">■ Milbrae■ Moraga■ Orinda■ Petaluma■ Pittsburg■ Pleasant Hill■ Richmond	<ul style="list-style-type: none">■ Sacramento■ San Francisco■ San Jose■ San Leandro■ San Pablo■ Vacaville■ Walnut Creek
Pending approval:		
<ul style="list-style-type: none">■ Elk Grove	<ul style="list-style-type: none">■ Escalon	<ul style="list-style-type: none">■ Santa Rosa

K-2

Susan Blackston

From: Steve Schwabauer
Sent: Wednesday, February 01, 2006 9:54 AM
To: Susan Blackston; Treacy Elliott
cc: City Council; Blair King; Richard Prima; Janice Magdich; Kirk Evans
Subject: RE: Feb 1 Agenda item k-2 Sidewalks

Dear Treacy:

Thanks for your continued input on issues of concern to the City. I have always been impressed by your manner, presentation and desire to see what is best for Lodi. As such, I felt compelled to respond with what information I can.

In the subdivision map that created your neighborhood, the developers dedicated a public easement for the sidewalk and street right of way. As such, you own the fee title to the ground to the centerline of your street. However, that fee ownership is subject to the continued right of the public to keep a sidewalk in place along the frontage of your property that meets the City's standard specifications as dedicated in the subdivision map (in other words, just because you have the fee title and the maintenance obligation does not mean you can tear it out or fence it). In addition, the City does not pay for the initial installation of sidewalks. Instead that cost is paid by the developer and passed on to the homeowner as a part of the initial cost of the home.

Because the initial cost is borne by the homeowner, the Streets and Highways Code has long provided that it is the property owner's obligation to maintain the sidewalk. Consistent with that law, the City has always required property owners to maintain the sidewalk in front of their home (unless the defect is caused by a City tree or other city issue in which case the City pays for the repair). Indeed you may have noted the letter to the editor from Ms. Paneda who indicated she had been required to repair her sidewalk over 25 years ago. However, the city's practice has been to only require repairs when the condition is particularly dangerous, a trip has occurred or the property owner pulls a home improvement permit. As such it is understandable that most homeowners are not aware that they now have and always have had this obligation. The City does have and will continue its program to grind or patch sidewalk defects within the confines of its limited sidewalk budget. However that program is an accommodation and not required by law. The ordinance will not really affect the maintenance portion of the City budget in any fashion because as indicated that obligation is already on the property owner.

The ordinance tonight is therefore not about maintenance but instead about liability. However the ordinance up for discussion tonight will only change the current liability result in one particular case. In every sidewalk case currently pending against the City, the property owner is also named. This is because, if the property owner's maintenance of a tree, sprinkler or other item, created the dangerous condition then the homeowner is already liable under traditional common law tort principles. On the other hand if the defect is caused by a street tree or other city caused issue, the City will continue to be liable first to the injured party and second for indemnity to the property owner (unless the property owner was aware of the defect, the City was not, and the property owner failed to notify the City of it-in which case the liability would be shared.) These liabilities are already known and understood by homeowner's insurance policies which regularly pay claims for indemnity to the City where the property owner's tree caused the injury. The change deals with the one condition where it is not known what caused the defect. In that case, liability under the proposed ordinance would fall to the property owner but in most cases, probably result in a shared settlement since both sides have the risk of being found at fault. I cannot say with precision what effect the ordinance will have on the City's liability budget because I can not predict future litigation. However, on average we currently pay about 20,000 dollars per year in sidewalk claims. In our highest year we paid over \$100,000. Assuming half of these are caused by City issues and half by homeowners, it would be my expectation that the ordinance will reduce the city's average claims by about 25 percent or \$2,500.

As for curb and gutter, the maintenance obligations are already the same as for sidewalks (homeowner pays unless the City caused the defect). Sewer and water are utilities so those are covered by your water rates and will not now or ever be assigned to the property owners except to the extent they are paid through the rate structure, or concern a sewer or water lateral on the homeowner's property. Street maintenance is funded through gas taxes and there is no state law obligation on property owners to maintain them. As such, that cost will not be passed on to property owners either.

A similar ordinance was passed in San Jose over 10 years ago and a number have followed suit. Sacramento, Walnut Creek and many others currently have the ordinance. Elk Grove has a hearing scheduled to consider one as well. Because the ordinance is becoming a standard for California Cities, staff felt obligated to bring it to the Council for consideration. However the policy call of whether to adopt it will remain with the Council.

Thank you for your input and if you have any further questions about the ordinance I would be glad to answer them. You can

2/1/2006

ilways reach me at this email, my office 209 333-6701 or my cell 209 329-0250. Take care Treacy.

Steve Schwabauer
Lodi City Attorney

From: Susan Blackston
Sent: Wednesday, February 01, 2006 7:38 AM
To: 'Treacy Elliott'
Cc: City Council; Blair King; Steve Schwabauer; Richard Prima
Subject: RE: Feb 1 Agenda item k-2 Sidewalks

Dear Treacy Elliott:

This reply is to confirm that your message was received by the City Clerks Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the following departments for information, referral, or handling: 1) City Manager, 2) City Attorney, and 3) Public Works.

Thank you for expressing your views.

/s/ Susan J. Blackston, City Clerk

-----Original Message-----

From: Treacy Elliott [mailto:lazylib@sbcglobal.net]
Sent: Tuesday, January 31, 2006 6:52 PM
To: Susan Blackston
Subject: Feb 1 Agenda item k-2 Sidewalks

Dear Council Members,

I am unable to attend the Feb 1 Council meeting to speak to you in person. I am urging that you not introduce an ordinance that will put both the liability and maintenance costs for sidewalks on the shoulders of the citizens of Lodi. Over the years through taxes, the citizens have provided the city with funds designated to support the repair of sidewalks and any litigation that results from accidents that occur due to their disrepair. I walk around Lodi quite a bit and have noticed that many of the sidewalks in the older sections of town, just blocks away from city hall, are in disrepair and in fact, my wife has fallen on a section that has been lifted by a tree. To shift the responsibility to the citizens before the sidewalks are in a repaired condition is flat out wrong. My Father once told me, "Just because you can do something, doesn't mean it's the right thing to do." I suggest that the council heed his advice. I would really like to know what the cost would be if all sidewalks requiring repair were repaired and what the City has expended the last year in both sidewalk repair as well as costs associated with any litigation. For what purpose will the unused tax dollars earmarked for sidewalk repair and litigation be used? What would be the budget impact if the ordinance was passed or if it was not? Thank you for taking the time to listen to my opinion. I would appreciate hearing your thoughts on the subject.

Treacy Elliott
1712 W. Lockeford St.
Lodi. CA 95242

K-2

Susan Blackston

From: Steve Schwabauer
Sent: Wednesday, February 01, 2006 9:22 AM
To: Susan Blackston; John and/or Lisa Donati
cc: City Council; Blair King; Richard Prima; Janice Magdich; Kirk Evans
Subject: RE: Vote " N O on Sidewalk proposal

Dear Mr. and Mrs. Donati:

I took a moment to review the subdivision map that created your neighborhood. In that map the developers of your neighborhood dedicated a public easement for the sidewalk and street right of way. **As** such, you do own the fee title to the ground to the centerline of your street. However, that fee ownership is subject to the continued right of the public to keep a sidewalk in place along the frontage of your property that meets the City's standard specifications as dedicated in the subdivision map (in other words, just because you have the fee title and the maintenance obligation does not mean you can tear it out or fence it). In addition, you should be aware that the City does not pay for the initial installation of sidewalks. Instead that cost is paid by the developer and passed on to the homeowner as a part of the initial cost of the home.

Because the initial cost is borne by the homeowner, the Streets and Highways Code has long provided that it is the property owners obligation to maintain the sidewalk. Consistent with that law, the City has always required property owners to maintain the sidewalk in front of their home (unless the defect is caused by a City tree or other city issue in which case the City pays for the repair). Indeed you may have noted the letter to the editor from Ms Paneda who indicated she had been required to repair her sidewalk over 25 years ago. However, the city's practice has been to only require repairs when the condition is particularly dangerous, a trip has occurred or the property owner pulls a home improvement permit. **As** such it is understandable that most homeowners are not aware that they now have and always have had this obligation. The City does have and will continue its program to grind or patch sidewalk defects within the confines of its limited sidewalk budget. However that program is an accommodation and not required by law.

The ordinance tonight is therefore not about maintenance but instead about liability. However the ordinance up for discussion might only change the current liability result in one particular case. In every sidewalk case currently pending against the City, the property owner is also named. This is because, as you surmised, if the property owner's maintenance of a tree, sprinkler or other item, created the dangerous condition then the homeowner is already liable under traditional common law tort principles. On the other hand if the defect is caused by a street tree or other city caused issue, the City will continue to be liable first to the injured party and second for indemnity to the property owner (unless the property owner was aware of the defect, the City was not and the property owner failed to notify the City of it-in which case the liability would be shared.) These liabilities are already known and understood by homeowner's insurance policies which regularly pay claims for indemnity to the City where the property owners tree caused the injury. The change deals with the one condition where it is not known what caused the defect. In that case, liability under the proposed ordinance would fall to the property owner but in most cases, probably result in a shared settlement since both sides have the risk of being found at fault.

As for curb and gutter, the maintenance obligations are already the same as for sidewalks (homeowner pays unless the City caused the defect). Sewer and water are utilities so those are covered by your water rates and will not now or ever be assigned to the property owners except to the extent they are paid through the rate structure, or concern a sewer or water lateral on the homeowner's property. Street maintenance is funded through gas taxes and there is no state law obligation on property owners to maintain them. **As** such, that cost will not be passed on to property owners either.

A similar ordinance was passed in San Jose over 10 years ago and a number have followed suit. Sacramento, Walnut Creek and many others currently have the ordinance. Elk Grove has a hearing scheduled to consider one as well. Because the ordinance is becoming a standard for California Cities, staff felt obligated to bring it to the Council for consideration. However the policy call of whether to adopt it will remain with the Council.

Thank you for your input and if you have any further questions about the ordinance I would be glad to answer them.

Steve Schwabauer
 City Attorney

From: Susan Blackston
Sent: Wednesday, February 01, 2006 8:31 AM
To: 'John and/or Lisa Donati'
Cc: City Council; Steve Schwabauer; Blair King; Richard Prima
Subject: RE: Vote "NO on Sidewalk proposal"

Dear John Donati:

This reply is to confirm that your message was received by the City Clerks Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the following departments for information, referral, or handling: 1) City Manager, 2) City Attorney, and 3) Public Works.

Thank you for expressing your views.

/s/ Susan J. Blackston, City Clerk

-----Original Message-----

From: John and/or Lisa Donati [mailto:jdonati@sbcglobal.net]
Sent: Wednesday, February 01, 2006 8:25 AM
To: Susan Blackston; Susan Hitchcock; Bob Johnson; JoAnne Mounce; John Beckman; Larry Hansen
Subject: Vote "NO" on Sidewalk proposal

Dear elected City Officials:

Having read the article in the Lodi N-S on Monday, talked to my neighbors around Lodi and read the Letters to the Editor this morning, I feel compelled to add my two cents worth.

When my street way created, it was done so under City direction, paid for by the City and has been owned and maintained by the City for close to 50 years. It is part of the overall infrastructure (streets, water lines, gas lines, sewer lines, ...) that is required to allow for a city to function uniformly and smoothly.

When I purchased my house, it came with a Deed of Trust that noted the exact legal description and dimensions of my lot. That description and dimensions did not include the sidewalk portion in front of my lot.

Just because the State of California might have passed some ordinance/law/proposal last year doesn't mean you need to pass some ridiculous proposal in our City. Like the Letters in the newspaper, if you think you can make the homeowner responsible for the maintenance and liability of a piece of land that we don't have legal rights to, you are not voting in our best interest. I understand if a property owners tree has roots that have grown outside their legally owned property and causes damage to the adjacent sidewalk that the property owner should be responsible, possibly even liable. But to say that property owner can be sued if someone trips and falls on a stretch of sidewalk that just happens to be in front of their legally owned piece of land is truly ludicrous.

Also, where will it end. To balance a budget are you going to make us maintain and be responsible for the gutter? The street on our side of the street in front of our legally owned lot? The sewer and water lines that run in front of our lot (even though you are already charging us extra ever month for that infrastructure)? Where will it end?

Again, the City needs its infrastructure and it needs to be uniform. You manage this by having a section in the City budget to cover the costs. You should not come to the populous and ask us to take on this uniform maintenance and liability responsibility because then it will become non-uniform (replacing sidewalk with grass, painting the sidewalk multiple colors, fencing it to reduce liability, ...) and it will open a chaotic liability

discussion.

Please vote "NO" on this proposal and **look** to balance our budget in a different way.

Please call me if you wish to discuss this further.

John Donati
1217 Edgewood Dr
333-7466

John and/or Lisa

K-2

Susan Blackston

From: Susan Blackston
Sent: Wednesday, February 01, 2006 2:55 PM
To: 'Watts Nancy'
Cc: City Council; Richard Prima; Blair King; Steve Schwabauer
Subject: RE: Sidewalk Ordinance

Dear Nancy Watts:

This reply is to confirm that your message was received by the City Clerk's Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the following departments for information, referral, or handling: 1) City Manager, 2) City Attorney, and 3) Public Works.

Thank you for expressing your views

/s/ Susan J. Blackston, City Clerk

-----Original Message-----

From: Watts Nancy [mailto:nawatts@lodinet.net]
Sent: Wednesday, February 01, 2006 2:36 PM
To: Susan Blackston
Subject: Sidewalk Ordinance

Members of the Lodi City Council:

I have concerns about the proposed "Sidewalk Ordinance." The sidewalk has public access that I have no control over. If indeed, I create any dangerous condition on that sidewalk, state law already provides for owner liability.

The maintenance of city streets & sidewalks, public access, is part of the responsibility of the City of Lodi ... our taxes pay for public works. This should not be used as a way to cut costs in the city budget!!!

The argument that other cities have such ordinances, should be looked at carefully. Are you really looking at the same type of situation??? Are they planned communities with no public services; are they new residential developments??? Does Sacramento have such an ordinance? Stockton, Modesto, etc?

Exactly who is making this proposal and WHY?

Thank you for your thoughtful consideration.

Nancy Watts
241 Ticknor Court
Lodi

K-Z

Jennifer Perrin

From: Jennifer Perrin
Sent: Wednesday, February 01, 2006 4:52 PM
To: 'Muzikmakin@aol.com'; City Council: Blair King; Jim Krueger; Steve Schwabauer; Janice Magdich; Susan Blackston; Richard Prima
Subject: FW: Sidewalk issue

Dear Mr. & Mrs. Hawkinson:

This reply is to confirm that your message was received by the City Clerk's Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the following departments for information, referral, or handling: 1) City Manager, 2) City Attorney, and 3) Public Works.

/s/ Jennifer M. Perrin, Deputy City Clerk

-----Original Message-----

From: Muzikmakin@aol.com[mailto:Muzikrnakin@aol.com]
Sent: Wednesday, February 01, 2006 4:41 PM
To: Susan Lake
Subject: Sidewalk issue

I am a homeowner in Lodi and have been for 41+ years. The issue of maintaining one's own sidewalk is almost too ridiculous for words. Questions:

- 1) If the City utility (which passes under my sidewalk) has to be worked on and my sidewalk torn up, who is then responsible for replacing the sidewalk?
- 2) Since I am a Senior Citizen on fixed income, retired from the City of Lodi, and drawing PERS retirement, how do you expect that I am going to pay for sidewalk repair since my retirement has NOT kept up with the cost of living? I retired from the rank and file, not administration or management. The retirement pay is nowhere near the same.
- 3) Since I have a PERS retirement, when I applied for SS, 30% was taken away from me.
- 4) The cost of my health insurance has gone up over 300% since I retired. I am now currently required to pay for it. This required that I go back to work part-time, at age 67. My standard of living has dropped. I do not have extra income.
- 5) There are senior citizens in this town who may own their own homes, but are living on SS, with no extra income. How they are supposed to pay for sidewalk repairs and/or maintenance?
- 6) My part-time job is doing home-owners insurance inspections. If the public sidewalks become the homeowners' responsibility to maintain, and subjects them to liability, insurance rates will go up making it even more of a hardship on those with fixed income.
- 7) Previous City Councils made foolish decisions relative to the ground-water clean-up. If the money spent trying to keep from fixing it had been spent on fixing it instead, the City would not be in the financial pinch it is in now. Why should we homeowners have to pay for their mistakes?
- 8) Our water, electricity, sewer and garbage rates have already gone up. Also, PG&E has raised the price of natural gas. When will this end?
- 9) These rate increases and/or future property repair requirements are like putting the rate payer/tax payer in a pot of cold water like the frog. You turn the heat up a little bit at a time and eventually, we're cooked. It is getting to the point where retirees on fixed income cannot afford to live in Lodi and cannot afford to move any where else. What are we supposed to do?

10) Are you playing Monopoly with real money? By that, I mean you roll the dice, it lands on Chance and we, the property owners, are assessed for repairs?

Don Hawkinson
(and Mrs. Don Hawkinson)

K-2

Susan Blackston

From: Susan Blackston
Sent: Tuesday, January 31, 2006 7:38 AM
To: 'Linda Huffman'
Cc: City Council; Blair King; Steve Schwabauer; Richard Prima
Subject: RE: Sidewalk Madness
Dear Linda Huffman:

This reply is to confirm that your message was received by the City Clerks Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the following departments for informational purposes: 1) City Manager, 2) City Attorney, and 3) Public Works.

Thank you for expressing your views.

S/ Susan J. Blackston, City Clerk

-----Original Message-----

From: Linda Huffman [mailto:huffman_family_is@sbcglobal.net]
Sent: Monday, January 30, 2006 11:02 PM
To: Susan Blackston; Susan Hitchcock; Bob Johnson; JoAnne Mounce; John Beckman; Larry Hansen
Subject: Sidewalk Madness

Dear City Council People - STOP THE INSANITY. Do you honestly think homeowners should be held liable for city owned sidewalk repairs? This is ludicrous. It is NOT the responsibility of home owners for city sidewalk upkeep. If the sidewalk is in disrepair and someone gets hurt, you want them to be able to sue ME? I DON'T THINK SO. I could not believe what a read in the paper today about this proposal. I can't seem to locate "sidewalk" in my mortgage papers; I suppose it can be amended though, right? If this ordinance passes, do not park on MY piece of the sidewalk, I will have you towed. You will know which piece is mine cause I will paint it a pretty color, or maybe I will tear it up and plant grass out to the street so you can't trip and sue me. I strongly suggest you vote NO on this ridiculous proposal. This seems to be a way of sticking it the citizens of Lodi so you can save a few bucks to make up for the mis-management of the electrical power spending. There must be better things to spend your time on. Have you asked your own home owners insurance just how expensive this is gonna cost you personally? I already have a hard time swallowing the electric bill these days and now you want me to accept this? NO WAY. The citizens of Lodi elected you to represent what WE would like so you need to listen to us and stop this insanity.

Linda Huffman
2207 Oxford Way
Lodi

NOTE: The following blue sheet items were presented at the meetings of 1/4/06 and 1/18/06, at which this subject matter was subsequently pulled from the agenda.

January 3, 2006

Dear Councilmember,

In regards to sidewalk responsibility:

1. I live on South Church Street where the sidewalk is set back 10 feet from the street are you going to deed that strip of land to me?
2. Since the sidewalk in front of my home is buckled, are you going to acknowledge this pre-existing condition in this transfer of responsibility?
3. In regards to question 2 since repeated requests for repairs have been ignored as was a city-wide survey, how much responsibility will remain the city's?

Regards,

John and Chris Mitchell
915 S. Church Street
Lodi

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Susan Blackston

K-5

From: Susan Blackston
Sent: Wednesday, January 04, 2006 11:40 AM
To: 'Bob & Jackie Healy'
cc: City Council; Steve Schwabauer; Blair King; Richard Prima
Subject: RE: Sidewalk Maintenance

Dear Jackie Healy:

This reply is to confirm that your message was received by the City Clerk's Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the following departments for information, referral, or handling: 1) City Manager, 2) City Attorney, and 3) Public Works.

/s/ Susan J. Blackston, City Clerk

-----Original Message-----

From: Bob & Jackie Healy [mailto:bjhealy@inreach.com]
Sent: Wednesday, January 04, 2006 11:37 AM
To: Susan Blackston
Subject: Sidewalk Maintenance

Just read in the Stockton Record where the city council will be discussion an ordinance that would make adjacent property owners responsible for maintaining sidewalks. Three questions regarding that issue:

1) Do part of my property taxes currently pay for the maintenance of city sidewalks?

2) If I am responsible for maintaining sidewalks adjacent to my property, then will I have the right to enforce no parking on the sidewalk adjacent to my property? As it is now, cars pull up onto the sidewalk to be further off the street.

3) If I am responsible for maintaining sidewalks adjacent to my property, then will I also have the freedom to choose the type of sidewalk I want?

Thanks for your prompt reply to this inquiry. I need to tell you I am in favor of this ordinance.

Respectfully,

Jackie Healy, Lodi Property Owner

bj healy@inreach.com

K-5

Susan Blackston

From: Janice Magdich
Sent: Tuesday, January 17, 2006 10:11 AM
To: City Council
Cc: Blair King; Susan Blackston; Richard Prima; Steve Schwabauer
Subject: RE: Agenda Item K-05 (Meeting of 1-18-06) Sidewalks

Dear Council Members:

With regard to Mr. Hallisey's statements, the following should clarify

State law has long established a property owner's duty to a city to maintain the abutting sidewalk in a condition that will not endanger persons or property and **as** well as a duty to maintain the sidewalk in a condition that will not interfere with public use (Streets and Highway Code section 5610).

However, the Legislature has not specifically imposed upon property owners a duty of care to third parties regarding the condition of abutting sidewalks. Therefore, cities in California, consistent with their police power and case law, are free to adopt local ordinances creating such a duty of care. The draft ordinance included on the Council's January 18th agenda is such an ordinance.

By way of additional information, the courts have determined that these types of ordinances do not conflict with the California Tort Claims Act because they do not attempt to shift liability from the cities to the abutting property owner. And do not absolve cities from liability when cities create a dangerous condition or when cities have notice of unsafe conditions and fail to act. In fact the court of appeal recently held that an ordinance imposing a duty of care to third parties using the public sidewalks on abutting property owners was constitutional and served a public purpose by providing an additional layer of protection to pedestrians and incentives to property owners to appropriately maintain their property and the adjacent sidewalks, or face the consequences of their failure to do so.

Janice D. Magdich, Deputy City Attorney

-----Original Message-----

From: Blair King
Sent: Tuesday, January 17, 2006 7:57 AM
To: Janice Magdich
Subject: FW: Agenda Item K-05 (Meeting of 1-18-06)

Janice - FYI

From: Susan Blackston
Sent: Tuesday, January 17, 2006 7:44 AM
To: 'E.W. Hallisey'
Cc: City Council; Blair King; Steve Schwabauer; Richard Prima
Subject: RE: Agenda Item K-05 (Meeting of 1-18-06)

Dear E.W. Hallisey:

This reply is to confirm that your message was received by the City Clerk's Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the following departments for informational purposes:
1) City Manager, 2) City Attorney, and 3) Public Works.

Thank you for expressing your views.

/s/ Susan J. Blackston, City Clerk

-----Original Message-----

From: E.W. Hallisey [mailto:e.hallisey@sbcglobal.net]

Sent: Monday, January 16, 2006 4:21 PM

To: Susan Blackston; Susan Hitchcock; Bob Johnson; JoAnne Mounce; John Beckman; Larry Hansen

Subject: Agenda Item K-05 (Meeting of 1-18-06)

I would hope all would reconsider not supporting, passing on the responsibility of sidewalk maintenance & liability to property owners. Historically this has been the responsibility of the city and should remain so.

There are many areas as you know, within the city which are in ill repair regarding sidewalks and curbs. Without question they should be repaired to limit injury to person and property **as** well as limiting liability.

It is my understanding, that this is in part what our tax money has been collected for; to maintain our streets, sidewalks & curbs. This has been the case as far back as I can remember.

I ask each of you to consider this change, and apply the tax monies collected now and in the future to the responsibilities, this city has historically accepted.

Respectively,

E.W. Hallisey

K-5

Phil Frieders
Sheryl Carey
Victoria Randall
1725 Timberlake Circle
Lodi, CA 95242

RECEIVED
2006 JAN 18 PM 1:53
CITY CLERK
CITY OF LODI

January 17, 2006

Lodi City Council

Honorable Councilmembers,

We are property owners in the city of Lodi and have issues regarding the implementation of your proposed ordinance to add Chapter 12.03 to the Lodi Municipal Code Title 12.

We ask that you remove Agenda item **K-5** from the regular calendar until further staff work and public hearings are provided to give ample public input for this important policy change.

Existing sidewalks are required by the City with the costs generally passed on to the developers. Requiring property owners to assume maintenance and liability for these sidewalks is unreasonable. Sidewalks are public property and should be maintained at public expense. Passing on City responsibility for infrastructure via ordinance is not good public policy. Because a 100 year old state Improvement **Act** allows cities the ability to pass on costs to property owners does not address the question of the City of Lodi's responsibility to maintain public assets with public taxes, not private property owners.

We feel that publishing the ordinance "**one** time" in the Lodi News Sentinel is not adequate exposure for property owners to properly respond.

Please give proper attention to this important matter by allowing the public to become better informed of your intentions and are allowed to voice their position on this proposed ordinance.

Respectfully,

Phil Frieders
Sheryl Carey
Victoria Randall

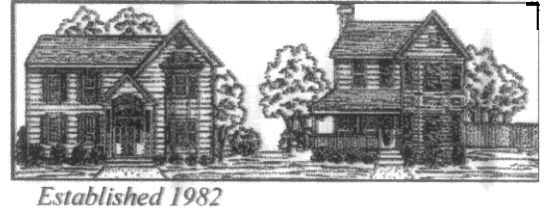
Phil Frieders
Sheryl Carey
Victoria Randall

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K-5

Lakeshore Village Owners Association
1040 W. Kettleman Lane #373
Lodi, CA 95240
(209) 333-7159

RECEIVED
2006 JAN 18 PM 1:50
CITY CLERK
CITY OF LODI



City of Lodi
City Council
221 W. Pine Street
Lodi, CA 95240

RE: January 18, 2006 Agenda Item K-05

January 17, 2006

Honorable Councilmember,

I **am** requesting on behalf of the Lakeshore Village Homeowners Association and it's 205 homeowners, that you remove Agenda item K-5 from the regular calendar until **further staff** work and public hearings **are** provided to give ample public input for **this** important policy change.

Existing sidewalks **are** required by the City with the costs generally passed on to the developers. Requiring property owners to assume maintenance and liability for these sidewalks is unreasonable. Sidewalks **are** public property and should be maintained at **public** expense. **Passing** on City responsibility for **infrastructure** via ordinance is not good public policy. Because a 100 year old **state** Improvement Act allows cities the ability **to** pass on costs to property owners does not address the question of the City of **Lodi's** responsibility to maintain public assets with public taxes, not private property owners.

We feel that **publishing** the ordinance "one time" in the Lodi News Sentinel is not **adequate exposure** for property owners to properly respond.

Please give **proper** attention to **this** important matter by allowing the public to become better informed of your intentions and **are allowed to voice** their position on this proposed ordinance.

Respectfully, 

Phil Frieders, President Lakeshore Village Homeowners Association.

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